is made an opportunity of adducing evidence in rebuttal; in other words, the Magistrate should have heard both sides of the case in accordance with the ordinary procedure of the Courts. There is no evidence on the record to show how the Magistrate could have been satisfied —

(a) that a notice to abate a nuisance had been served upon the applicant; and

(b) that the applicant had made default in complying with it.

The provisions of section 80 were not complied with and this omission, going as it does not merely to a matter of procedure but to the fundamental question whether justice has been seen to be done, in my view amounts to an illegality and is not merely an irregularity curable under section 422 Criminal Procedure Code (if, indeed, that section applies at all, which is, to say the least, doubtful). The interests of justice demand a proper hearing, and I therefore set aside the nuisance order made by the Magistrate on the 6th July, 1957, and remit the case to the Magistrate's Court with directions that he hear the complaint in accordance with normal judicial procedure.

Order accordingly.

Solicitors: *Chabra & Dharmananda.*

N. RAMACHANDRAN v. PUBLIC PROSECUTOR

[A.Cr.J. (Smith J.) June 12, 1958]

[K.L. — Criminal Appeal No. 21 of 1958]

Road Traffic — Traffic sign — "No Parking" — Waiting at "No Parking".

The appellant in this case had arranged by telephone to pick up his friend in his motor car and driven to Batu Road where he stopped his car by a "No Parking" sign and requested a watchman to go indoors and inform his friend that he was there, whilst he remained in the driver's seat waiting for his friend. A policeman told the appellant to drive on, but he did not do so, saying that he wanted to wait for his friend. He was charged and convicted for the offence of failing to conform to the indication given by a traffic sign, to wit "NO PARKING" under the Motor Vehicles Traffic Signs Regulation, reg. 33(b).

Held: waiting before a house in a public street while the driver of the car remained at the wheel did not constitute "parking".

A distinction could be drawn between "waiting" and "parking" in a public street. If a person remained in his stationary car in Batu Road he would be "waiting" there, but if he went out and got into a shop leaving his car there he would be "parking" his car. A parked car is always a waiting car, but a waiting car in a public street is a parked car only when the driver is absent from the vehicle.

Case referred to:—

(1) *Ashby v. Tolhurst* (1937) 2 K.B. 242.

MAGISTRATE'S CRIMINAL APPEAL.

Lall Singh Muker for the appellant.

Mohamed Salleh bin Abas (Federal Counsel) for the respondent.

Smith J.: The appellant was convicted of the following offence:—

"That you on 8th August, 1957 at about 4.20 p.m. at Batu Road, Kuala Lumpur being the driver of Motor Vehicle No. N9551 did fail to conform to the indication given by a traffic sign, to wit "NO PARKING" and that you have thereby committed an offence under Reg. 33(b) of the Motor Vehicles Traffic Signs Regs. and punishable under Reg. 8(1) of the Road Transport Proclamation No. 17."

The facts are simple. The appellant had telephoned a friend who lived in Batu Road to the effect that he would pick the friend up in his motor-car. The appellant drove to Batu Road and stopped by a "No Parking" sign and requested a watchman to go indoors and inform his friend that he was there. The appellant remained in the driver's seat waiting for his friend. A police officer told the appellant to drive on. The appellant did not do so saying that he wanted to wait for his friend. He waited there for about eight minutes and when the friend came he drove away.

The question which the Court is called upon to decide is whether waiting before a house in a public street for eight minutes while the driver of the car remains at the wheel constitutes "parking".

"Parking" is not defined under the Road Transport Proclamation. In the examples of traffic signs given in Part I to the schedule of the Motor Vehicles Traffic Signs Regulations, 1946, there appears a sign "No Waiting This Side On Even Dates". There is no statutory example of a sign with "No Parking" upon it. It appears to me that it is perfectly clear that an offence would have been committed if the notice had read "No Waiting." What is to be decided is whether the terms "parking" and "waiting" are synonymous.

The only case in which an attempt has been made to define the word "parking" judicially is that of *Ashby v. Tolhurst*,(1) in which the Court was considering the exact nature of a particular contract between the proprietor of a car park and a person whose car had been stolen from the car park. In his judgment Sir Wilfrid Greene, M.R. made the following remarks *obiter* at page 249:—

"If you park your car in the street you are liable to get into trouble with the police. On the other hand, you are entitled to park your car in places indicated by the police or the appropriate authorities for the purpose. Parking a car is leaving a car and, I should have thought, nothing else."

To my mind a distinction can be drawn between "waiting" and "parking" in a public street. When I remain in my stationary car in Batu Road I am waiting there. If I get out and go into a shop leaving my car there I am parking my car. The essential difference between "parking" and "waiting" in a public street appears to me to be that a car is parked when the person who has control over it is absent from the vehicle. When a vehicle is "waiting" a driver is always at hand to move it should it be likely to cause any obstruction. A parked car is always a waiting car, but a waiting car in a public street is only a parked car when the driver is absent from the vehicle.

On the facts of this particular case it is possible that the appellant failed to comply with the lawful order of a police officer by refusing to remove his vehicle. He may also have obstructed the highway with his car but I am satisfied that he did not park his car because he was still in it and in control of it. He waited in the car. Parking in Batu Road was prohibited, not waiting, and the appellant was therefore not guilty as charged.

I therefore allowed the appeal and ordered that the fine be repaid to the appellant.

Appeal allowed.

Solicitors: *Lovelace & Hastings.*

TEOH CHENG SUM & ANOR. v. ANG AH CHEONG

[A.C.J. (Rigby J.) October 22, 1958]

[Penang — Civil Appeal No. 9 of 1958]

Landlord and Tenant — Express prohibition against sub-letting — Whether a sub-tenant can be affected by Order of possession made without notice to him — Control of Rent Ordinance, 1956, s.19(1)(a) — Meaning of words "or has had an opportunity of being heard" appearing in s.19(1)(b) of the Control of Rent Ordinance.

The brief facts of this case were that on December 10, 1956, the appellants, as the landlords of No. 49-H, Weld Quay, Penang, obtained an order in the Sessions Court, for possession against the then tenants, Tong Lee Hin Ltd., under section 12(1)(b) of the Control of Rent Ordinance, 1956, on the ground that rent lawfully due was more than 14 days in arrears. The tenant appealed against that order and obtained a stay of execution pending the determination of their appeal. Their appeal was dismissed on November 2, 1957.

On December 19, 1957, the present appellants obtained an Order for execution of the judgment including an order that the bailiff of the Court do enter upon the premises and deliver up the vacant possession thereof to the present appellants. When the bailiff sought to execute the order he found the present respondent in possession of part of the premises.

On December 30, 1957, the present respondent filed a Notice of Objection to the Execution Order. In that Notice he claimed to be a lawful sub-tenant of part of the premises from the former tenants, that he was not in arrears with his rent, and he, therefore, claimed to be (or to have become) a statutory tenant of the appellants as landlords (on the termination of the lease of the head tenants, Tong Lee Hin Ltd.).

The learned President of the Sessions Court found as a fact that there was an express prohibition against sub-letting. The respondent was not a party in the original proceedings between the landlord and tenant when the Eviction Order was made.

The short, but important practical point for the consideration of the Court was, whether the words "or has had an opportunity of being heard" appearing in section 19(1)(b) of the Control of Rent Ordinance are restricted to "an opportunity of being heard" in the original proceedings between the landlord and tenant when the Eviction Order was made, or whether they are intended to include proceedings, such as the present, where objection has been taken to a proposed execution of the order for eviction as against the chief tenant, and the sub-tenant on such objection, in truth and in fact "has had an opportunity of being heard."

Held: (1) applying the principles enunciated in *Soon Kooi Hun v. R. Chindan*(1) and *Tan Joo Eng v. Siang Heng Co. Ltd.*(2) which refer both to the procedure to be followed in the lower Courts and in the High Court by a sub-tenant affected by an order for possession of which he had no notice and no opportunity of being heard in the proceedings in which such order was made, the alternative words "or has had an opportunity of being heard" contained in section 19 (1)(b) are intended to afford an opportunity to a sub-tenant to appear and to be heard at any stage before the Order for recovery of possession is enforced against him and are not restricted to an opportunity of being heard before the Order for recovery of possession was made. It is for him then to show, if he can, that he is a lawful sub-tenant and entitled to the protection of the Control of Rent Ordinance or, in the words of Whyatt, C.J. "entitled to retain possession on any other ground";

(2) in the present case the learned President having found as a fact that there was an express prohibition against sub-letting, whatever rights the respondent might have had against his chief tenants he had clearly acquired no rights as a lawful sub-tenant as against the landlords. He could not, therefore, avail himself of the protection of the Control of Rent Ordinance or any other grounds entitling him to retain the possession.

Cases referred to:—

(1) *Soon Kooi Hun v. R. Chindan,* (1954) M.L.J., 247.